IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.146of 2005
Date of Decision 23.12.2010

Miss Manisha daughter of Sh.Kartar Singh

..... Petitioner

VERSUS

Shri Chander Singh and another

..... Respondents

CORAM:- HON'BLE MR. JUSTICE A.N.JINDAL

Present: Mr.Vivek Singla, Advocate,
for Mr.Rahul Vats, Advocate,
for the petitioner.

Mr.J.S.Rattu, Deputy Advocate General, Haryana,
for respondent No.2-State.

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A.N.JINDAL, J:

This petition has arisen out of the judgment dated 15.09.2004, passed by Additional Sessions Judge (Fast Track Court), Bhiwani, acquitting respondent No.1-accused (herein referred as 'the accused') of the charges under Sections 376, 452, 323 IPC, framed against him.

Prosecution story in brief is that on 10.02.2000, prosecutrix (name not disclosed) made a statement before the police that she was a student of 10+1 class. On the aforesaid date, at about 5:45 p.m., she had gone for serving fodder to the cattle in the cattle shed. In the meantime,the accused came and grappled with her. He gagged her mouth and broke the string of her salwar. Despite the efforts, she could not save herself. In the meantime, her parents arrived to whom she disclosed about the entire occurrence. Her father had beaten the accused with the stick and had confined him in a room. On the aforesaid statement, the case was registered and investigated.

On submission of the charge report, he was charged under Sections 376, 511 and 323 IPC to which he pleaded not guilty and claimed

trial. Lateron the charges were amended to under Sections 376, 452 and 323 IPC.

The prosecution, in order to substantiate the charges, examined Dr.Wazir Singh (PW1), Sub Inspector Maya Ram (PW2), Constable Rajbir Singh (PW3), Dr.K.L.Bawa (PW4), Dr.Sanjana Anand(PW5), Constable Ram Mehar(PW6), Dr.Poonam Bawa (PW7), Head Constable Santosh (PW8),Head Constable Ram Avtar(PW9), Kanwarpal Parmar, Draftsman (PW10), Dr.U.S.Disodia (PW11), Prosecutrix (PW12), Sub Inspector Ajayab Singh (PW13) and Kamla Devi (PW14).

The prosecution also proved on record copy of MLR of the accused Ex.PA, copy of FIR Ex.PB, x-ray report Ex.PC, application for conducting x-ray examination of prosecutrix Ex.PC/1, Application moved by the police before doctor Ex.PD, Affidavit of Constable Ram Mehar Ex.PE, MLR of prosecutrix Ex.PF, application for conducting medical examination of prosecutrix Ex.PG, recovery memo Ex.PH, affidavit of Head Constable Ram Avtar Ex.PJ, scaled siteplan Ex.PK, photocopy of MLR of accused Ex.PL and rough site plan Ex.PM.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances appearing against him and pleaded his false implication.

The trial resulted into acquittal.

Arguments heard. Record perused.

As a matter of fact, the conduct of the prosecutrix (PW12) is not above board. Though, at the time of recording the statement, on the basis of which FIR was lodged, she only levelled allegations with regard to attempt of the accused to commit rape. However, during her statement in

the Court, she has stated that the accused had tied her hands with the rope, broken the string of her salwar and committed rape upon her. After 2-3 minutes, her parents came there on hearing her shrieks. Her mother had caught hold of accused and also apprised her father about the incident. From this extract of her statement, it transpires that the prosecutrix never disclosed to the police that her hands were tied with the rope and the accused committed rape upon her. It is also not in her statement under Section 164 Cr.P.C. that her mother came on hearing her shrieks and lateron her father came, to whom the story was narrated but the FIR Ex.PB reveals that her parents had come there and witnessed the occurrence.

At the same time, Kamla Devi, mother of the prosecutrix (PW14), has given a different version, stating that when she went to the cattle shed, she saw that the accused was committing rape upon the prosecutrix and on seeing her, the accused ran away. She asked her daughter to wear her clothes. She wore the clothes and then narrated the incident to her husband. Dr.Poonam Bawa (PW7) has contradicted the ocular version, stating that the prosecutrix did not detect any such mark of injury on her body which may suggest sexual intercourse. As per FSL report, no semen was detected on the underwear of the prosecutrix. Thus, the trial Court, appears to have rightly appreciated the evidence and taking stock of the contradictory version which stood uncorroborated by the medical evidence, acquitted the accused.

No grounds to interfere.

Dismissed.

(A.N.Jindal)
Judge

23.12.2010
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